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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,091	09/19/2006	Dieter Katzer	SMB-PT182 (PC 06 359 US)	3973
3624 7590 06/23/2009 VOLPE AND KOENIG, P.C. UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			EXAMINER GANNEY, STEVEN J	
			ART UNIT 3752	PAPER NUMBER
			MAIL DATE 06/23/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/599,091

**Applicant(s)**

KATZER, DIETER

**Examiner**

STEVEN J. GANEY

**Art Unit**

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 13-116 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4 and 5 is/are rejected.
- 7) ☒ Claim(s) 3, 6-10 and 13-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/003)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Receipt is acknowledged of the amendment filed on January 27, 2009, which has been fully considered in this action.

#### ***Claim Objections***

2. Claims 1, 3, 5, 7, 8, 10, 11, 13, 15 are objected to because of the following informalities: In claim 1, lines 1 and 2, the sentence “ , said plumbing fixture comprising a water outlet (2), with” should be changed to --having a water outlet, comprising-- in order to not positively recite the plumbing fixture and to only claim the subcombination of aerator. In claim 1, line 3, the phrase --adapted to be-- should be inserted before the word “removably” in order to only functionally recite the cylindrical outlet end of the plumbing fixture. In claim 1, line 6, the phrase --adapted to be-- should be inserted before the word “threadingly” in order to only functionally recite the cylindrical outlet end of the plumbing fixture. In claim 3, line 4, the phrase “ball/spherical” should be changed to --ball or spherical-- to maintain proper antecedent basis. In claim 3, line 5, the phrase “is fixed in the outlet end”, should be changed to --which is adapted to be threadingly engaged in the inner thread in the cylindrical outlet end--, in order to reflect the amended changes in claim 1. In claim 5, line 2, the word “aerator” should be changed to --outer ring-- in order to clearly maintain proper antecedent basis. In claim 7, line 1, the phrase “ball/spherical” should be changed to --ball or spherical-- to maintain proper antecedent basis. In claim 8, line 1, the phrase “ball/spherical” should be changed to --ball or spherical-- to maintain proper antecedent basis. In claim 10, line 1, the numeral “1” should be changed to the

numeral --6-- in order to provide proper antecedent basis for “the spherical segment. In claim 11, lines 1 and 2, the sentence “ , said plumbing fixture comprising a water outlet (2), with” should be changed to --having a water outlet, comprising-- in order to not positively recite the plumbing fixture and to only claim the subcombination of aerator. In claim 11, line 4, the phrase --adapted to be-- should be inserted before the word “removably” in order to only functionally recite the outlet end of the plumbing fixture. In claim 11, line 5, the phrase --adapted to be-- should be inserted before the word “fixed” in order to only functionally recite the cylindrical outlet end of the plumbing fixture. In claim 11, line 7, the phrase “the spherical segment” lacks antecedent basis. Since claim 11 depends from claim 10 and claim 10 should have depended from claim 6 which depends from claim 3, the additional claim language of claims 3 and 6 should be added to claim 11 to provide proper antecedent basis and claim dependency. In claim 11, line 9, the phrase “ball/segment” should be changed to --spherical-- in order to maintain proper antecedent basis with claim 10. In claim 13, line 2, the word “contacts” should be replaced with the phrase --is adapted to contact-- in order to only functionally recite the step of an interior of the water outlet. In claim 13, line 2, the phrase “a region, especially a step,” is improper since it is not clear if the limitation after the phrase “a region” is part of the claimed invention. The phrase should be changed using language such as --a region comprising a step--.

In claim 15, line 2, the phrase “ball/spherical” should be changed to --ball or spherical-- to maintain proper antecedent basis. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Symmons.

Symmons discloses an aerator 2/4 having an outer side 30 being partially spherical and is mounted pivotally within an outer ring 22 that has external threads at 24 to threadingly engage internal threads 14 of a plumbing fixture 10.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shook.

Shook discloses an aerator 5 having an outer side being partially spherical and is mounted pivotally within an outer ring 1/2/3/4 that can be threadingly engaged to threads of a plumbing fixture, except for the threads on an outer periphery 3 of the ring being external threads to engage the internal threads of a cylindrical outlet end of a plumbing fixture. Note, Shook discloses internal threads at outer periphery 3. It would have been obvious to one having

ordinary skill in the art at the time the invention was made to provide external threads on the outer periphery 3 of the ring of Shook in order to engage internal threads of a cylindrical outlet end of a plumbing fixture, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

A to claims 4 and 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the external threads be dimensioned as claimed in order to fit into outlet ends of typical plumbing fixtures.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Symmons.

Symmons discloses all the featured elements of the instant invention except for the standard dimensions of the outer ring threads. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the external threads be standards dimensions as claimed in order to fit into outlet ends of typical plumbing fixtures.

#### ***Allowable Subject Matter***

8. Claim 11 is allowed.
9. Claims 3, 6-10 and 13-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

10. Applicant's arguments with respect to claims 1, 2, 4 and 5 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN J. GANEY whose telephone number is (571)272-4899. The examiner can normally be reached on 9:00-5:00; Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on 571-272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven J. Ganey/  
Primary Examiner  
Art Unit 3752

sjg